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ATTORNEY GENERAL

Office of the Attorney General
State of Texas

August 30, 1991

Mr. Mark B. Tobey
Assistant Attorney General
Antitrust Division
P.O. Box 12548
Austin, Texas 78711-2548

OR91-391

Dear Mr. Tobey:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 12971.

The Antitrust Division of the Office of the Attorney General (the division) received an open records request for all documents relating to any investigation of veterinary practices that allegedly violate state antitrust statutes. You contend that the requested information comes under the protection of sections 3(a)(1), 3(a)(3), 3(a)(8), and 3(a)(10) of the Open Records Act. Because we have determined that sections 3(a)(3) and 3(a)(7) protect this information, we need not consider the other exceptions that you raise.

We note at the outset that this office has previously held that at least some of the documents currently being requested were excepted from required public disclosure pursuant to section 3(a)(3) because the division at that time anticipated litigation regarding its investigation of alleged restraint of trade practices in Travis County. *See* Open Records Letter OR91-092 (1991). Because that litigation is now pending, OR91-092 still governs, and you may therefore withhold, those same documents.

To secure the protection of section 3(a)(3), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation. *See* Open Records Decision No. 551 (1990). To the extent that the division possesses other documents directly relating to the Travis County investigation, those documents may also be withheld pursuant to section 3(a)(3). We

assume, however, that none of the requested information has previously been made available to the requestors. Absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.* through discovery or by court order, no section 3(a)(3) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the requestor has seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 3(a)(3). We note, for example, that the requestor may have a special right of access to some of the requested information pursuant to section 15.10(i)(4) of the Business and Commerce Code.

With regard to the division's records of other investigations in Texas, we note that this information is the subject of a protective order issued during the above referenced litigation. Information that is the subject of a protective order is protected from public disclosure by section 3(a)(7) of the Open Records Act. *See* Open Records Decision No. 143 (1976). Accordingly, you may withhold this information pursuant to section 3(a)(7) until the litigation has concluded. *See* Open Records Decision No. 309 (1982).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-391.

Yours very truly,



Susan Garrison
Assistant Attorney General
Opinion Committee

SG/RWP/lb

Ref.: ID# 12971
ID# 13156

cc: Gwen Hampton
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